

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc.)	
a Massachusetts Corporation)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-12457 PBS
)	
Arthrex, Inc.)	
a Delaware Corporation, <i>et al.</i>)	
)	
Defendants.)	
)	

**DEFENDANTS ARTHREX, INC.'S AND PEARSALLS, LTD.'S SECOND
SUPPLEMENTAL MEMORANDUM RELATING TO PATENT OWNERSHIP**

Defendants Arthrex, Inc. and Pearsalls, Ltd. submit this paper to highlight some of the deficiencies of DePuy Mitek's assertion that it owns the '446 patent.

DePuy Mitek's Supplemental Memorandum filed August 9 does not remedy the chain of title of the '446 patent for at least two reasons. First, Exhibit 1 to DePuy Mitek's Supplemental Memorandum purports to transfer *something*, there is no evidence the '446 patent was included in this transfer. Specifically, Exhibit 1 merely says "all assets and liabilities of its wound closure and related surgical device business (the "DIVISION") on the books or records of Old Ethicon." There is no mention of the '446 patent. This is no small matter. DePuy Mitek has alternately claimed in this case that the '446 patent is owned for investment purposes or that it is a patent related to the sports medicine market. Both arguments raise serious questions whether the '446 patent was on the books or records of the wound closure and related surgical device business. Accordingly, Exhibit 1 is insufficient to show the '446 patent was transferred to "New Ethicon."

Second, Exhibit 2 to DePuy Mitek's Supplemental Memorandum purports to show that "New Ethicon" changed its name to "Ethicon, Inc." However, a search of New Jersey corporate records shows that Ethicon, Inc., having an associated name New Ethicon, Inc., merged out of existence on December 22, 1997, prior to the purported assignment to DePuy Mitek dated August 9, 2004. Ex. 1. There simply is no record that the '446 patent was ever transferred to the Ethicon entity that allegedly assigned the '446 patent to DePuy Mitek. Accordingly, DePuy Mitek has not shown proper chain of title to the '446 patent.

For the foregoing reasons, the Court should find that DePuy Mitek is not the owner of the '446 Patent.

Dated: August 12, 2007

Respectfully submitted,

By: /s/Charles W. Saber

Charles W. Saber

Stephen A. Soffen

Salvatore P. Tamburo

DICKSTEIN SHAPIRO LLP

1825 Eye Street, N.W.

Washington, D.C. 20006-5403

Telephone: (202) 420-3116

Facsimile: (202) 420-2201

Christopher Weld, Jr. (BBO # 522230)

Raymond P. Ausrotas (BBO # 640315)

TODD & WELD LLP

28 State Street, 31st Floor

Boston, MA 02109

Telephone: (617) 720-2626

Facsimile: (617) 227-5777

Counsel for Defendants

Arthrex, Inc. and Pearsalls Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DEFENDANTS ARTHREX, INC.'S AND PEARSALLS, LTD.'S SECOND SUPPLEMENTAL MEMORANDUM RELATING TO PATENT OWNERSHIP was served, via the Court's email notification system on the following counsel for Plaintiff on the 12th day of August 2007:

Lynn A. Malinoski
Woodcock Washburn, LLP
Cira Centre, 12th Floor
2929 Arch Street
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439

Daniel J. Gleason
Nutter McClennan & Fish LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2604
Telephone: (617) 439-2000
Facsimile: (617) 310-9000

/s/Charles W. Saber

Exhibit 1



New Jersey State Business Gateway Services Corporate and Business Information Reporting

» [Home](#)

Learn About...

» [Gateway Watch Services](#)

» [Business List Services](#)

Access Services...

» [Gateway Watch & Name Search](#)

» [Business List Search](#)

View Cart...

» [Shopping Cart](#)

» [Your History](#)

Gateway Watch - Business Entity Search Results

Name List

Following are the names that match your search request and a listing of filing (registration) numbers associated with the names. If you wish to receive an online status report, or place an order for a standing certificate, click the appropriate box(es) to the right of the name(s) you are interested in. If you wish to request a timed update, indicate the date on which the update is to be produced. If you wish to perform a new search, your selections will be added to your Shopping Cart and saved until you are finished searching and proceed with your purchase.

These results are current through **08/09/2007**.

You Searched For: **Ethicon**

Within Business Entity Search: **Business Name**

Fee Schedule

Status Reports:

Standing Certificate

Timed Updates:

* FLC and LLC Standing Certificate \$75.00 each.

Payment Information:

Pay Online via **Credit Account**. Please note: a fee will be charged for a Timed Update if it has not been sent to you.

	Business Entity Name	Filing Number	Type Code	Purchase Status Report	Purchase Standing Certificate	Purchase Timed Update (example date format: 01/23/2002)	Purchase Timed Update (example date format: 01/23/2002)
1	ETHICON ENDO-SURGERY, INC.	0100368369	FR	<input type="checkbox"/>	<input type="checkbox"/>		
2	ETHICON ENDO-SURGERY, INC.	0100884014	FR	<input type="checkbox"/>	<input type="checkbox"/>		
3	ETHICON, INC.	3772640000	DP	<input type="checkbox"/>	<input type="checkbox"/>		
4	ETHICON, INC.	0100349070	DP	<input type="checkbox"/>	<input type="checkbox"/>		
5	ETHICON, INC.	0100648993	DP	<input type="checkbox"/>	<input type="checkbox"/>		
6	ETHICON RESEARCH FOUNDATION	0900018342	NP	<input type="checkbox"/>	<input type="checkbox"/>		

[View Type Code Descriptions](#)

Your search returned 6 matches.

6 records displayed on Page 1 of 1

If you have selected an item and would like to Perform a New Search, that item will be added to your Shopping Cart.

[Perform New Search](#)

[Proceed With Order](#)

[Privacy Policy](#)



New Jersey State Business Gateway Services Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As"

All available information is displayed.

Status Report For: ETHICON, INC.**Business Name: ETHICON, INC.****Report Date: 08/09/****Business ID Number: 3772640000****Transaction Number: Sequence: 115775**

Business Type: DOMESTIC PROFIT CORPORATION**Status: MERGED**

Filing Date: 08/11/1945**Home Jurisdiction: NJ****Status Change Date: 03/09/1988****Stock Amount: 99999999****DOR Suspension Start Date:****DOR Suspension End Date:****Tax Suspension Start Date:****Tax Suspension End Date:****Annual Report Month: 8****Last Annual Report Filed: 06/24/1987****For Last Annual Report Paid Year: 1987**

Incorporator: X**Agent: J T WOODWARD III****Agent Address: ONE JOHNSON & JOHNSON PLAZA****NEW BRUNSWICK, NJ 08933 - 0000****Office Address Status: Deliverable****Main Business Address:****Principal Business Address:**

Associated Names**Name:****Type Description:**

Officers/Directors/Members: Not Available

[Exit](#)[Return to Main List](#)[Next >](#)

**If you would like to receive photocopies of documents filed by this business entity, mail your request to Trenton, NJ 08625. Indicate the Business Entity Number(s) involved and the type of document you wish to receive. Your choices are listed below:

CHARTER DOCUMENTS

Original Certificate Only (For example, Certificate of Incorporation);

Changes and Amendments to the Original Certificate Only; **OR**

All Charter Documents (Original Certificate and Changes/Amendments)

And/or

ANNUAL REPORTS

Copy of Latest Annual Report; **OR**

Copy of Annual Report for a Specific Year(s) (List the Year Desired)

The photocopy fee for all entities except limited liability companies is \$1 per page. For limited liability companies, for the first page and \$2 per page thereafter.

The total fee amount for your order will vary depending on the number of pages associated with each file you request. You may supply us with a check with a NOT TO EXCEED instruction to cover the costs. Make payable to the Treasurer, State of New Jersey. Alternately, you may pay by credit card (provide card#/exp and cardholder information) or depository account. Please include a self-addressed envelope with your order. If you have any questions or would like information on alternative service options such as over-the-counter expedited service, call 609-292-9292 (option 3 on the main menu and then option 8), weekdays, 8:30 a.m. to 4:30 p.m.

[Privacy Policy](#)



New Jersey State Business Gateway Services Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As" All available information is displayed.

Status Report For: ETHICON, INC.

Business Name: ETHICON, INC.

Report Date: 08/09/

Business ID Number: 0100648993

Transaction Number: Sequence: 115775

Business Type: DOMESTIC PROFIT CORPORATION

Status: MERGED

Filing Date: 12/22/1995

Home Jurisdiction: NJ

Status Change Date: 12/22/1997

Stock Amount: 100

DOR Suspension Start Date:

DOR Suspension End Date:

Tax Suspension Start Date:

Tax Suspension End Date:

Annual Report Month: 12

Last Annual Report Filed: 11/07/1996

For Last Annual Report Paid Year: 1996

Incorporator: KENNETH A BERLIN

Agent: JOHNSON & JOHNSON

Agent Address: ONE JOHNSON & JOHNSON PLAZA

NEW BRUNSWICK, NJ 08933 - 0000

Office Address Status: Deliverable

Main Business Address: US ROUTE 22

SOMERVILLE, NJ 08876

Principal Business Address:

Associated Names

Name: NEW ETHICON, INC.

Type Description: Previous Name

Officers/Directors/Members

1) Title: CHIEF EXEC. OFFICER (CEO)
Name: F RYAN
Address: US ROUTE 22
SOMERVILLE, NJ 08876

[Exit](#)[Return to Main List](#)[< Previous](#)[Next >](#)

**If you would like to receive photocopies of documents filed by this business entity, mail your request to Trenton, NJ 08625. Indicate the Business Entity Number(s) involved and the type of document you wish to receive. Your choices are listed below:

CHARTER DOCUMENTS

Original Certificate Only (For example, Certificate of Incorporation);

Changes and Amendments to the Original Certificate Only; **OR**

All Charter Documents (Original Certificate and Changes/Amendments)

And/or

ANNUAL REPORTS

Copy of Latest Annual Report; **OR**

Copy of Annual Report for a Specific Year(s) (List the Year Desired)

The photocopy fee for all entities except limited liability companies is \$1 per page. For limited liability companies, for the first page and \$2 per page thereafter.

The total fee amount for your order will vary depending on the number of pages associated with each file you request. You may supply us with a check with a NOT TO EXCEED instruction to cover the costs. Make payable to the Treasurer, State of New Jersey. Alternately, you may pay by credit card (provide card#/exp. date and cardholder information) or depository account. Please include a self-addressed envelope with your order. If you have any questions or would like information on alternative service options such as over-the-counter expedited service, call 609-292-9292 (option 3 on the main menu and then option 8), weekdays, 8:30 a.m. to 4:30 p.m.

[Privacy Policy](#)



New Jersey State Business Gateway Services

Corporate and Business Information Reporting

Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As"

All available information is displayed.

Status Report For: ETHICON, INC.**Business Name: ETHICON, INC.****Report Date: 08/09/****Business ID Number: 0100349070****Transaction Number: Sequence: 115775**

Business Type: DOMESTIC PROFIT CORPORATION**Status: ACTIVE**

Filing Date: 09/01/1987**Home Jurisdiction: NJ****Status Change Date:****Stock Amount: 1000****DOR Suspension Start Date:****DOR Suspension End Date:****Tax Suspension Start Date:****Tax Suspension End Date:****Annual Report Month: 9****Last Annual Report Filed: 08/11/2006****For Last Annual Report Paid Year: 2006**

Incorporator: LEWIS STEIN**Agent: JOHNSON & JOHNSON****Agent Address: ONE JOHNSON & JOHNSON PLAZA****NEW BRUNSWICK, NJ 08933 - 0000****Office Address Status: Deliverable****Main Business Address: PO BOX 151****SOMERVILLE, NJ 08876- 0151****Principal Business Address: US ROUTE 22 WEST PO BOX 151****SOMERVILLE, NJ 08876- 0151**

Associated Names**Name: JOHNSON & JOHNSON MEDICAL, INC.****Type Description: Previous Name****Name: JOHNSON & JOHNSON TRANSFER INC.****Type Description: Previous Name**

Name: **SURGIKOS, INC.**Type Description: **Previous Name****Officers/Directors/Members**

- 1) Title: **SECRETARY**
Name: **S ROSENBERG**
Address: **ONE JOHNSON JOHNSON PLAZA**
NEW BRUNSWICK, NJ 08933
- 2) Title: **TREASURER**
Name: **K TOMPKINS**
Address: **PO BOX 151**
SOMERVILLE, NJ 08876
- 3) Title: **PRESIDENT**
Name: **D WILDMAN**
Address: **PO BOX 151**
SOMERVILLE, NJ 08876

[Exit](#)[Return to Main List](#)[< Previous](#)

**If you would like to receive photocopies of documents filed by this business entity, mail your request to Trenton, NJ 08625. Indicate the Business Entity Number(s) involved and the type of document you wish to receive. Your choices are listed below:

CHARTER DOCUMENTS

Original Certificate Only (For example, Certificate of Incorporation);

Changes and Amendments to the Original Certificate Only; **OR**

All Charter Documents (Original Certificate and Changes/Amendments)

And/or

ANNUAL REPORTSCopy of Latest Annual Report; **OR**

Copy of Annual Report for a Specific Year(s) (List the Year Desired)

The photocopy fee for all entities except limited liability companies is \$1 per page. For limited liability companies, for the first page and \$2 per page thereafter.

The total fee amount for your order will vary depending on the number of pages associated with each file you request. You may supply us with a check with a NOT TO EXCEED instruction to cover the costs. Make payable to the Treasurer, State of New Jersey. Alternately, you may pay by credit card (provide card#/exp date and cardholder information) or depository account. Please include a self-addressed envelope with your order. If you have any questions or would like information on alternative service options such as over-the-counter expedited service, call 609-292-9292 (option 3 on the main menu and then option 8), weekdays, 8:30 a.m. to 4:30 p.m.

[Privacy Policy](#)